

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
FILE NO. PAC-23-1-0397-V  
PERMIT NO. 8980973  
NONCOMPLIANCE NO. 541568  
FAILURE TO ABATE CESSATION ORDER NO. 534864

IN RE: PREMIER ELKHORN COAL LLC, VIRGIE CLEAN MINING LLC, PRISTINE  
CLEAN ENERGY LLC, MYRA RESOURCES LLC

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**CONFERENCE OFFICER’S REPORT AND RECOMMENDATION**

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I. SUMMARY

Non-Compliance No.:	541568
Failure to Abate Cessation Order No.:	534864
Total Proposed Amount of Assessment for Permittee, and Others:	\$50,700.00
Date of Service of Permittee (Premier):	09/14/2023
Date of Service of Others (Pristine, Myra):	09/18/2023
Date of Service of Other (Virgie):	10/06/2023
Date of PAC Request:	09/26/2023
Recommended Assessment for Permittee, and Others:	\$50,700.00

II. REPORT AND RECOMMENDATION

This matter is before the undersigned Conference Officer for a Report and Recommendation (“Report”) to the Secretary pursuant to 400 KAR 1:110, Section 4, following the filing of a timely request for a Penalty Assessment Conference by Billy R. Shelton for Premier Elkhorn Coal LLC, Virgie Clean Mining LLC, Pristine Clean Energy LLC, Myra Resources LLC. On November 1<sup>st</sup>, 2023, counsel for Premier Elkhorn Coal LLC, Virgie Clean Mining LLC, Pristine Clean Energy LLC, Myra Resources LLC filed a Notice of Request to Affirm Proposed Penalty Assessments (“Notice”) with the Office of Administrative Hearings. In

the Notice, Premier Elkhorn Coal LLC, Virgie Clean Mining LLC, Pristine Clean Energy LLC, Myra Resources LLC state that they no longer desire a penalty assessment conference as previously requested in this matter. Premier Elkhorn Coal LLC, Virgie Clean Mining LLC, Pristine Clean Energy LLC, Myra Resources LLC request that the Conference Officer issue a Report affirming the proposed penalty assessment amount.

Premier Elkhorn Coal LLC, Virgie Clean Mining LLC, Pristine Clean Energy LLC, Myra Resources LLC are advised that should they fail to timely file a petition for a Penalty Assessment Hearing (“PAH”) challenging the penalty assessment following issuance of this Report, the Office of Administrative Hearings will tender an appropriate Final Order to the Secretary upon expiration of the appeal time, affirming the proposed assessment. Premier Elkhorn Coal LLC, Virgie Clean Mining LLC, Pristine Clean Energy LLC, Myra Resources LLC’s appeal rights, which have been expressly reserved by Premier Elkhorn Coal LLC, Virgie Clean Mining LLC, Pristine Clean Energy LLC, Myra Resources LLC in the Notice, are set forth at the end of this Report.

### III. RECOMMENDATION

The undersigned recommends that the proposed penalty assessment be AFFIRMED in its entirety, with express reservation of formal hearing rights. A copy of the original Proposed Assessment Worksheet is attached to this Report.

*James J. Grawe*

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James J. Grawe, Conference Officer  
Office of Administrative Hearings  
Energy and Environment Cabinet  
Public Service Commission Building  
211 Sower Boulevard  
Frankfort, Kentucky 40601  
Telephone: 502-564-7312  
Facsimile: 502-564-4973

### **RIGHTS TO AN ADMINISTRATIVE HEARING**

Any person issued a proposed penalty assessment may request an administrative hearing to contest the Conference Officer's recommended penalty or the fact of the violation, or both, by filing with the Office of Administrative Hearings, 211 Sower Boulevard, Frankfort, Kentucky 40601, a petition under Sections 6 or 7 of 400 KAR 1:110. The Cabinet may also request under Section 5 of 400 KAR 1:110 an administrative hearing to contest the Conference Officer's recommended penalty.

If a request for an administrative hearing is not filed with the Office of Administrative Hearings within thirty (30) days of receipt of this Report and Recommendation, or within thirty (30) days of the return receipt date if the Report and Recommendation is returned undeliverable, unclaimed, or refused; the Secretary shall enter an order providing that: (a) the person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; (b) the fact of violation is deemed admitted; and (c) the penalty contained in this Report and Recommendation is deemed accepted and is due and payable to the Cabinet within thirty (30) days after the entry of the final order. If a petition requesting a hearing as to the fact of the violation has been timely filed pursuant to Section 7 of 400 KAR 1:110, the finding set forth in clause (b) of the preceding sentence shall be omitted from the Secretary's order and the penalty assessment shall be due and payable within thirty (30) days of the mailing of the final order affirming the fact of the violation.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Conference Officer's Report and Recommendation was served on \_\_\_\_\_ 01/05/2024 \_\_\_\_\_ by U.S. certified mail, postage prepaid and return receipt requested, to:

Certified Mail No. 70212720000235866894  
Premier Elkhorn Coal LLC  
100 W. Main St., Suite 900  
Lexington, KY 40507

Certified Mail No. 70212720000235866900  
Virgie Clean Mining, LLC  
6920 Highway 610 West  
Jenkins, KY 41537

Certified Mail No. 70212720000235866870  
Myra Resources, LLC  
2452 Sir Barton Way Suite 101  
Lexington, KY 40509

Certified Mail No. 70212720000235866863  
Pristine Clean Energy, LLC  
2691 Little Birch Road  
Sutton, WV 26601

By U.S. certified mail, postage prepaid and return receipt requested, and by electronic mail, to:

Certified Mail No. 70212720000235866887  
Hon. Billy R. Shelton  
Shelton, Branham & Halbert PLLC  
2452 Sir Barton Way, Suite 200  
Lexington, KY 40509  
bshelton@sbhlegal.net

Delivered by electronic mail, return receipt requested to:

Hon. Emily S. Payne  
Office of Legal Service  
300 Sower Blvd. 3rd Floor  
Frankfort, KY 40601  
emily.payne@ky.gov

Return Receipt

Received by: \_\_\_\_\_

Date: \_\_\_\_\_

*Diana Lowe*

DOCKET COORDINATOR

Distribution:

DMRE-email; Tara Lewis-email; Pikeville Regional Office-email

Penalty Assessment Conference Officer

PAC-23-1-0397

Proposed Assessment Worksheet

Company Name: PREMIER ELKHORN COAL LLC and VIRGIE CLEAN MINING LLC and PRISTINE CLEAN ENERGY LLC and MYRA RESOURCES LLC Permit #: 898-0973 Inspector: Heath Tackett Assessment Date: 09/13/2023  
 Non-Compliance: 54-1568 Date: 07/07/2023 Illegal Mining CO: \_\_\_\_\_ Date: \_\_\_\_\_ Final Inspection of:  Non-Compliance  Cessation Order  
 Failure to Abate CO: 53-4864 Date: 08/07/2023 Imminent Danger CO: \_\_\_\_\_ Date: \_\_\_\_\_ Inspection Date: 09/07/2023

Violation(s)	History *	Seriousness			Degree of Fault	Good Faith	Total Points	Assessment x Days = Point			F.T.A. x \$750 = F.T.A.		Total Assessment
		Probability	Damage	Administrative				Amount	Existed	Assessment	Days	per day	
CR-Contemporaneous Reclamation - KAR 16:020	2	12	2	0	20	0	36	\$1,600.00	3	\$4,800.00	30	\$22,500.00	\$27,300.00
DS-Disposal of Excess Spoil - KAR 16:130	2	0	0	7	20	0	29	\$900.00	1	\$900.00	30	\$22,500.00	\$23,400.00

* Previous Non-Compliances / Cessation Orders used to calculate history points: NC 53-9989 (WM, OC) VUP 3/31/2023	Total this page:	\$50,700.00
	Total Other Pages:	\$0.00
	<b>Total Assessment:</b>	<b>\$50,700.00</b>

\*\* Under 405 KAR 7:092 Section 13(3), the penalty for mining without a permit ranges from \$5,000 to \$25,000 per day; the point system is not used to calculate the proposed assessment.